

## NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides that substantive changes must be made to the rule, the agency shall prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office. The Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 411001 et seq.) publication of the Notice of Supplemental Proposed Rulemaking in the *Register* before holding any oral proceedings (A.R.S. § 411022).

### NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

##### PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

2 A.A.R. 3122, June 14, 1996.

2. Sections Affected

R9-22-1001

R9-22-1002

Rulemaking Action

Amend

Amend

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903.01(H)

Implementing statutes: A.R.S. §§ 36-2903(C)(10), 36-2903(G), 36-2903.01(M), and 36-2915

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheri Tomlinson

Address: AHCCCS, Office of Policy Analysis and Coordination  
801 E. Jefferson, Mail Drop #4200  
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6786

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Administration is revising 2 rules within Article 10 of the AHCCCS Acute Care rules to provide clarity regarding 1st and 3rd party liability terminology and sources. Language was added to require AHCCCS members and eligible persons to assist in identifying parties who may be liable to pay for AHCCCS covered services and this change will ensure that AHCCCS continues to act as the payor of last resort for members and eligible persons. Other changes will make the rules more concise, understandable and consistent with current federal and state laws and will clarify the roles and responsibilities of AHCCCS contractors, providers, nonproviders, and noncontracting providers in the 1st and 3rd party liability process.

6. An explanation of the substantial change which resulted in this supplemental notice:

R9-22-1001 is substantially revised to: 1) add definitions related to 1st and 3rd-party liability; 2) add a general provision; 3) provide more detailed description of cost avoidance practices including: responsible payments, limitations of co-insurance and deductible amounts; and exceptions including: emergency service, medically necessary service, medically necessary transportation service, and pre-natal and preventive pediatric services.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

ARTICLE 10: The agency anticipates no impact on business revenues or payroll for employers because changes are nonsubstantive and provide only further clarification of terminology and the roles and responsibilities of all parties. In addition, the proposed changes do not add any additional potentially liable sources. The streamlined language may strengthen the recoveries by the agency, via its contractor, which totaled over \$5 million during federal fiscal year 94-95. The new language will permit the state to better identify potential 1st and 3rd party liability sources and ensure that AHCCCS continues to be the payor of last resort for members and eligible persons. AHCCCS contractors, providers, nonproviders, and noncontracting providers who provide services to AHCCCS members and eligible persons may indirectly benefit since the roles and responsibilities of each of these parties will be more clearly defined.

**Notices of Supplemental Proposed Rulemaking**

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Jim Alger  
 Address: AHCCCS, Office of Policy Analysis and Coordination  
 801 East Jefferson, Mail Drop #4200  
 Phoenix, Arizona 85034  
 Telephone: (602) 417-4013  
 Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The agency intends to hold public hearings in early 1997.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
 Not applicable.

12. Incorporations by reference and their location in the rules:  
 Not applicable.

13. The full text of the changes follows:

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**ARTICLE 10. FIRST AND THIRD-PARTY LIABILITY**

- R9-22-1001. First and 3rd-party liability and coordination of benefits  
 R9-22-1002. First and 3rd-party liability monitoring and compliance

**ARTICLE 10. FIRST AND THIRD-PARTY LIABILITY**

- R9-22-1001. First and Third-Party Liability and Coordination of Benefits

**A. Definitions.** In this Section, the following definition applies:

1. "First party liability" means the resources available from any insurance obtained directly or indirectly by the member which provides benefits directly to the member, and is liable to pay all or part of the medical expenses incurred by an AHCCCS applicant or member.
2. "Cost avoidance" means avoiding payment of claims when a 1st or 3rd party payment source is available.
3. "Payor or last resort" means the Administration shall be used as a source of payment for covered services only after all other sources of payment for members, and eligible persons receiving care have been used.
4. "Third party liability" means the resources available from a person or entity that is or may be, by agreement, circumstance or otherwise, liable to pay all or part of the medical expenses incurred by an AHCCCS applicant or eligible person, as described in R9-22-101(128).

**B. General Provisions.** The Administration shall be the payor of last resort, unless specifically prohibited by applicable state or federal law.

**C. Cost avoidance.** The Contractor shall cost-avoid all claims or services that are subject to 3rd-party payment, and may deny a service to a member if it knows that a 3rd party (i.e., other insurers) will provide the service. The requirement to cost-avoid applies to all AHCCCS covered services, unless otherwise specified in this Section.

1. Responsible parties. The Administration requires the following parties to take responsible measures to identify

and recover from legally liable 1st or 3rd party persons and resources, they are:

- a. Contractor,
- b. Provider,
- c. Noncontracting Provider,
- d. Eligible Person, and
- e. Member.

2. Coordination of benefits. If the Contractor does not know whether a particular service is covered by the 3rd party, and the service is medically necessary, the Contractor shall contact the 3rd party, and determine whether or not such service is covered rather than requiring the member to do so. If the Contractor knows that the 3rd party insure will neither pay for nor provide the covered service, and the service is medically necessary, the Contractor shall not deny the service, nor require a written denial letter.

3. Co-payment, co-insurance, deductible. If a 3rd-party insurers (other than Medicare) required the member to pay any co-payment, coinsurance or deductible, the contractor must decide whether it is more cost-effective to provide the service:

- a. Within its network for continuity of care, or
- b. Pay co-insurance and deductibles for a service outside its network.

- i. Advance payments. If the insurer requires payment in advance of all co-payments, co-insurance and deductibles, the Contractor must make such payments in advance for the member.

- ii. Limitation of co-insurance and deductible amounts. The Contractor is not responsible for paying co-insurance and deductibles that are in excess of what the Contractor would have paid for the entire service, per a written contract with the provider performing the service, or the AHCCCS fee-for-service payment equivalent.

4. Exceptions. The Administration shall require the contractor to provide the following services, and then coordinate payment with the 3rd-party payer:

- a. Emergency service;

**Notices of Supplemental Proposed Rulemaking**

- b. Medically necessary service. The Contractor shall ensure that its cost avoidance efforts do not prevent a member from receiving a medically necessary service, and that the member shall not be required to pay any co-insurance or deductibles for use of the other insurer's provider;
  - c. Medically necessary transportation service. The Contractor shall provide medically necessary transportation so the member can receive 3rd-party benefits; and
  - d. Pre-natal and preventive pediatric services. The Administration may require the Contractor to provide pre-natal and preventive pediatric services, and then coordinate payment with the potentially liable 3rd party.
- D. Collections.** Contractor, provider, nonprovider, and noncontracting provider are responsible for identifying and pursuing collection of reimbursement from all probable sources of 1st or 3rd party liability, except for underinsured and uninsured motorists insurers, 3rd party liability insurers and tort-feasors unless referred by the Administration or its authorized representative. The contractor, provider, nonprovider, and noncontracting provider are responsible for identifying and notifying the Administration in accordance with R9-22-1002(D) of the potential liability of underinsured and uninsured motorist insurers, 1st or 3rd party liability, insurers and tort-feasors. The Administration shall coordinate and pursue collection from underinsured and uninsured motorist insurers, 1st or 3rd party liability insurers and tort-feasors in cases of probable 3rd party liability. The contractor, provider, nonprovider, and noncontracting provider shall cooperate with the Administration or its authorized representative in collection efforts.
- 1. Duplication of benefits. Payments made for covered services by AHCCCS shall not duplicate benefits otherwise available from probable 1st or 3rd party payors. Payments by AHCCCS for covered services may supplement payment or benefits from 1st or 3rd parties to the extent authorized by this Chapter or applicable contracts.
  - 2. Recoveries: contractor. A contractor may retain up to 100% of its 1st and 3rd party collections provided that:
    - a. Total payments received do not exceed the total amount of the contractor's financial liability for the member;
    - b. AHCCCS fee-for-service, deferred liability, and reinsurance benefits have not duplicated the recovery;
    - c. Such recovery is not prohibited by federal or state law; and
    - d. The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to reimburse the Administration up to 100% of 3rd party payments collected which are not reflected in reduced capitation rates.
  - 3. Recoveries: Administration. The Administration may retain its 1st and 3rd party collections up to 100% of fee-for-service, deferred liability and reinsurance payments. The funds collected shall be deposited in the AHCCCS fund.

**R9-22-1002. First and 3rd-party Liability Monitoring and Compliance.**

- A. First or 3rd-party liability sources.** The Administration shall monitor 1st or 3rd-party payments to a contractor, provider,

nonprovider, or noncontracting provider, which may include but are not limited to payments by or for:

- 1. Private health insurance;
  - 2. Employment-related health insurance;
  - 3. Long-term care insurance;
  - 4. Other Federal programs not excluded by statute;
  - 5. State worker's compensation;
  - 6. Automobile insurance, including uninsured and underinsured motorists insurance;
  - 7. Court judgments or settlements from liability insurers, including settlement proceeds placed in trusts;
  - 8. Court ordered or non court ordered medical support from absent parents;
  - 9. First party probate-estate recoveries;
  - 10. Adoption related payments; and
  - 11. Tort-feasors.
- B. Contractor responsibility.** The contractor shall be responsible for recovering 1st or 3rd party payments from the sources set forth in subsection (A) (1), (2), (3), and (4).
- C. Monitoring.** The Administration shall determine whether a contractor, provider, nonprovider, or noncontracting provider is in compliance with the requirements set forth in this Article by inspecting claim submissions and payment documentation for cost avoidance and recovery activities.
- D. Notification for perfection, recording and assignment of AHCCCS liens.**
- 1. County requirements. The county of residence shall notify the Administration pursuant to subsection (E) not later than 5 days after it files a lien pursuant to A.R.S. § 11-291 for charges for hospital or medical services provided to an injured person who is determined AHCCCS eligible, so that the Administration may preserve its lien rights pursuant to A.R.S. § 36-2915.
  - 2. Hospital requirements. Hospitals providing emergency or urgent medical services to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration pursuant to subsection (E) not later than 15 days after discharge. A hospital also may satisfy the requirement of this subsection by mailing to the Administration a copy of the lien it proposes to record or has recorded pursuant to A.R.S. § 33-932 not later than 15 days after discharge.
  - 3. The contractor, provider, nonprovider and noncontracting provider requirements. The contractor, provider, nonprovider, and noncontracting provider, other than a hospital, rendering medical services to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration pursuant to subsection (E) not later than 5 days after providing such services.
- E. Notification information for liens.** Notification requirements shall be satisfied when all of the following information is mailed to the Administration:
- 1. Name of the contractor, provider, nonprovider or noncontracting provider;
  - 2. Address of the contractor, provider, nonprovider, or noncontracting provider;
  - 3. Name of member or eligible person;
  - 4. Member's or eligible person's Social Security number or AHCCCS identification number;
  - 5. Address of member or eligible person;
  - 6. Date of member's or eligible person's admission;
  - 7. Amount estimated to be due for care of member or eligible person;

**Notices of Supplemental Proposed Rulemaking**

8. Date of member or eligible person's discharge;
  9. Name of county in which injuries were sustained; and
  10. Name and addresses of all persons, firms, or corporations and their insurance carriers claimed by the member or eligible person or the legal representative to be liable for damages.
- E.** Notification of health insurance information. The contractor, provider, nonprovider, and noncontracting provider shall provide notification of health insurance information to the Administration. Notification requirements shall be satisfied when all of the following health insurance information is submitted to the Administration within 10 days of receipt of the health insurance information:
1. Name of member or eligible person;
  2. Member's or eligible person's Social Security number or AHCCCS identification number;
  3. Insurance carrier name;
  4. Insurance carrier address;
  5. Policy number;
  6. Policy begin and end dates; and
  7. Insured's name and Social Security number.
- G.** Forfeitures. Contractor, provider, nonprovider, or noncontracting provider who fail to meet the notification requirements set forth in this Section shall forfeit their right to reimbursement, including fee-for-service, deferred liability, and reinsurance, from the Administration for services provided to the eligible person, or from the contractor for services provided to the member, unless the contractor, provider, nonprovider, or noncontracting provider demonstrates good cause for such failure. Good cause means a cause that was not within the contractor's, provider's, nonprovider's or noncontracting provider's control.

**ARTICLE 10. THIRD PARTY LIABILITY**

- R9-22-1001. Third-party liability and coordination of benefits**
- A.** Payor of last resort. AHCCCS shall be used as a source of payment for covered services only after all other sources of payment for members and eligible persons receiving care have been used. AHCCCS shall act only as a payor of last resort unless specifically prohibited by applicable federal law.
- B.** Reasonable efforts. The Administration, providers, nonproviders, eligible nonenrolled persons, and members shall take reasonable measures to identify and recover from legally liable 3rd party resources. Providers include prepaid capitated contractors.
- C.** Collections. Contractors are responsible for identifying and pursuing collection of reimbursement from all probable sources of 3rd party liability, except for underinsured and uninsured motorists insurance, 3rd party liability insurance and tort-feasors. Contractors are responsible for identifying and notifying the Administration in accordance with of R9-22-1002 (D) of the potential liability of underinsured and uninsured motorist insurance, 3rd party liability insurance and tort-feasors. The Administration shall coordinate and pursue collection from underinsured and uninsured motorist insurance, 3rd party liability insurance and tort-feasors in cases of probable 3rd party liability. Contractors shall cooperate with the Administration in its collection efforts.
- D.** Duplication of benefits. Payments made for covered services by AHCCCS shall not duplicate benefits otherwise available from probable 3rd party payors. Payments by AHCCCS for covered services may supplement payment or benefits from

3rd parties to the extent authorized by these rules or applicable contracts.

- E.** Recovery; prepaid capitated contractors. A contractor may retain up to 100% of its 3rd party collections provided that:
1. Total payments received do not exceed the total amount of the contractor's financial liability for the member;
  2. AHCCCS fee-for-service, deferred liability and reinsurance benefits have not duplicated the recovery;
  3. Such recovery is not prohibited by federal or state law; and
  4. The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to reimburse the Administration up to 100% of 3rd party payments collected which are not reflected in reduced capitation rates.
- F.** Recovery; Administration. The Administration may retain its 3rd party collections up to 100% of fee-for-service, deferred liability and reinsurance payments.

**R9-22-1002. Third-party Liability Monitoring and Compliance**

- A.** Categories of 3rd party liability. The Administration shall monitor 3rd party payments to a provider or nonprovider, which may include but are not limited to payments by or for:
1. Workmen's compensation;
  2. Disability insurance;
  3. A hospital and medical service corporation;
  4. A health care services organization or other health or medical insurance plan;
  5. Standard health insurance;
  6. Medicare and other governmental payors;
  7. Medical payments insurance for accidents;
  8. Underinsured or uninsured motorist insurance, 3rd party liability insurance or tort-feasors.
- B.** Contractor responsibility. The contractor shall be responsible for recovering 3rd party payments from the sources set forth in subsections (A)(1) through (7).
- C.** Monitoring. The Administration shall determine whether a provider or nonprovider is in compliance with the requirements set forth in this Article by inspecting source documents for:
1. Verifiability and reliability;
  2. Appropriateness of recovery attempt;
  3. Timeliness of billing;
  4. Accounting for reimbursements;
  5. Auditing of receipts; and
  6. Other monitoring deemed necessary by the Administration.
- D.** Notification for perfection, recording and assignment of AHCCCS liens.
1. County requirements. The county of residence shall notify the Administration pursuant to subsection (E) not later than 5 days after it files a lien pursuant to A.R.S. § 11-291 for charges for hospital or medical services provided to an injured person who is determined AHCCCS-eligible, so that the Administration may preserve its lien rights pursuant to A.R.S. § 36-2915.
  2. Hospital requirements. Hospitals providing emergency or urgent medical services to an eligible nonenrolled person or member for an injury or condition resulting from circumstances reflecting the probable liability of a 3rd party shall notify the Administration pursuant to subsection (E) not later than 15 days after discharge. A hospital also may satisfy the requirement of this paragraph by

Notices of Supplemental Proposed Rulemaking

mailing to the Administration a copy of the lien it proposes to record or has recorded pursuant to A.R.S. § 33-932 not later than 15 days after discharge.

3. ~~Provider and nonprovider requirements. Providers and nonproviders other than hospitals rendering medical services to an eligible nonenrolled person or member for an injury or condition resulting from circumstances reflecting the probable liability of a 3rd party shall notify the Administration pursuant to subsection (E) not later than 5 days after providing such services.~~

E. ~~Notice requirements. Notice requirements shall be satisfied when all of the following information is mailed to the Administration:~~

1. ~~Name of provider or nonprovider;~~
2. ~~Address of provider or nonprovider;~~
3. ~~Name of patient;~~
4. ~~Patient's Social Security Number or AHCCCS identification number;~~

5. ~~Address of patient;~~
  6. ~~Date of patient's admission;~~
  7. ~~Amount estimated to be due for care of patient;~~
  8. ~~Date of patient's discharge;~~
  9. ~~Name of county in which injuries were sustained; and~~
  10. ~~Names and addresses of all persons, firms or corporations and their insurance carriers claimed by the patient or the patient's legal representative to be liable for damages.~~
- F. ~~Sanctions. Providers or nonproviders who fail to meet the notice requirements set forth in this Section shall forfeit their right to reimbursement, including fee for service, deferred liability and reinsurance, from the Administration for services provided to eligible nonenrolled persons or members, unless the provider or nonprovider demonstrates good cause for such failure. Good cause means a cause that was not within the provider's or nonprovider's control.~~